



**Project title:** Adopt an ordinance prohibiting public consumption of controlled substances, amending Chapter 10.35 EMC.

## City Council Agenda Item Cover Sheet

**Council Bill #**

CB 2304 – 29

**Agenda dates requested:**

4/19, 4/26, 5/3

**Briefing**

Proposed action 4/19 and  
4/26

**Consent**

Action 5/3

Ordinance x

Public hearing

Yes x No

**Budget amendment:**

Yes x No

**PowerPoint presentation:**

Yes x No

**Attachments:**

Ordinance redlined

Ordinance draft

**Department(s) involved:**

Legal

**Contact person:**

Lacey Offutt

**Phone number:**

(425) 257-8528

**Email:**

loffutt@everettwa.gov

**Initialed by:**

Department head

Administration

Council President

**Project:** Ordinance prohibiting public consumption of controlled substances

**Partner/Supplier:** N/A

**Location:** Everett, WA

**Preceding action:** N/A

**Fund:** N/A

**Fiscal summary statement:**

N/A

**Project summary statement:**

This ordinance will amend Chapter 10.35 of the Everett Municipal Code. Councilmembers received a briefing at the April 12, 2023 city council meeting.

The proposed new code (EMC 10.35.120) will create a new misdemeanor offense to knowingly use a controlled substance a public place within the City of Everett. The proposed ordinance defines "controlled substances" as "a drug, substance, or immediate precursor included in Schedules I, II, III, and IV as set forth in federal or state laws, or federal or commission rules, but does not include cannabis, cannabis concentrates, cannabis products, or cannabis-infused products as those terms are defined in RCW 69.50.101." This definition includes controlled substances such as heroin, methamphetamine, fentanyl, and Xanax, but excludes controlled substances federally scheduled as schedule V controlled substances, which are rarely, if ever, abused or used in public, such as antidiarrheals. The definition of Controlled Substances also excludes cannabis and cannabis products from its definitions for the purpose of proposed new EMC 10.35.120.

The proposed ordinance amends existing EMC 10.35.100, relating to Drug-Free Zones, to permit enhanced fines and imprisonment of up to two times that otherwise permitted when the offender commits specified crimes within designated drug-free zones. Specified crimes include existing crimes such as possession of a controlled substance, as well as the new crime of knowingly using controlled substances in a public place. Enhanced imprisonment under this EMC elevates the maximum imprisonment to 180 days in custody and the fine to a maximum of \$2000.

Following the recent state legislative session, this ordinance has been updated to reflect a change to a gross misdemeanor charge. There are changes in Section 1 (F) as well as Section 2 and 4 to reflect the change and match current state preemption language.

**Recommendation (exact action requested of Council):**

Adopt an ordinance prohibiting public consumption of controlled substances, amending Chapter 10.35 EMC.





ORDINANCE NO. \_\_\_\_\_

An ORDINANCE Relating to Public Consumption of Controlled Substances, AMENDING Chapter 10.35 EMC.

WHEREAS,

- A. In February 2021, the Washington State Supreme Court held in *State v. Blake*, 197 Wn.2d 170, that former RCW 69.50.4013, criminalizing the possession of certain controlled substances, unconstitutionally created a strict liability felony offense.
- B. In response, the Washington State Legislature in May, 2021 passed Engrossed Senate Bill 5476, amending the State's Uniform Controlled Act to include a *mens rea* and requiring that persons subject to arrest for possession of a controlled substance be referred to assessment and services in lieu of arrest at least twice before he or she may face misdemeanor criminal charges for the possession of a controlled substance.
- C. The State law change has resulted in increased public use of controlled substances without a prescription in the City of Everett.
- D. The use of controlled substances without prescription and the supervision of a medical professional can result in physical injury or death to the user.
- E. The use of controlled substances can have negative mental and physical health consequences for the user.
- F. The use of controlled substances without a prescription is positively correlated with criminal behavior.
- G. The City has taken steps to connect individuals who publicly use controlled substances within the City of Everett with resources such as substance use disorder treatment through various City programs, including pairing social workers and mental health professionals with peace officers, referring individuals to services, and connecting individuals with the Law Enforcement Assisted Diversion program.
- H. The public use of controlled substances adversely impacts public order and endangers the health, safety, and welfare of the residents and visitors of the City of Everett.
- I. The City of Everett has the power to provide for the punishment of all practices dangerous to public health or safety, and to make necessary for the preservation of public health, peace, and



good order, and to provide for the punishment of all persons charged with violating any city ordinance.

**NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:**

**Section 1. EMC is amended to add the following section as EMC 10.35.XXX:**

- A. Except where punishable under Chapter 10.37 EMC, it is unlawful for any person to knowingly use any controlled substance in a public place, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or as otherwise authorized under Federal or State law.
- B. "Use" means to inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.
- C. "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I, II, III, and IV as set forth in federal or state laws, or federal or commission rules, but does not include cannabis, cannabis concentrates, cannabis products, or cannabis-infused products as those terms are defined in RCW 69.50.101.
- D. "Public place" means an area generally visible to public view, and includes any place to which the public has a right of access, including streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not), transit vehicles, transit stations, and buildings open to the public, as well as doorways, windows, drive-up windows, and entrances to buildings or dwellings that are visible to public view.
- E. "Practitioner" shall have the same meaning as in RCW 69.50.101 as currently enacted or later amended.
- F. When a police officer has probable cause that a person has violated this section, the officer may, but is not required to, refer that person to services, a jail alternative program, and/or a diversion program in lieu of jail booking, citation, or referral to the prosecutor for the criminal offense.
- G. Any person who violates this section is guilty of a gross misdemeanor, except if the Washington State Legislature enacts any provision consistent with subsection (A) – (E) of this section, the penalty for a violation of this section shall be the same as that prescribed by state law.

**Section 2. EMC 10.35.100 is amended as follows, with strikeouts deleted and underlining added:**

**Drug-Free zones - Violations**



- A. Any person who violates, EMC 10.35.011, EMC 10.35.12, EMC 10.35.020, EMC 10.35.030, EMC 10.35.060, EMC 10.36.020 and the violation occurs in a school, on a school bus, within one thousand feet of a school bus route stop designated by the school district, within one thousand feet of the perimeter of the school grounds, in a public park, in a public housing project designated as a drug-free zone, on a public transit vehicle or in a public transit stop shelter may be punished by a fine of up to twice the fine otherwise authorized by this chapter, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.
- B. It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated as a drug-free zone, on a public transit vehicle, or in a public transit stop shelter.
- C. It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated as a drug-free zone, or the public transit vehicle, or at the school bus route stop or the public transit vehicle stop shelter at the time of the offense or that school was not in session.
- D. It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling or possessing with the intent to manufacture, sell or deliver any controlled substance for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.
- E. In a prosecution under this section, a map produced or reproduced by any municipal, school district, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing project designated as a drug-free zone, or public transit vehicle stop shelter, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated as a drug-free zone, or public transit vehicle stop shelter. Any map approved under this section or a true copy of the map shall be filed with the clerk of the city, and shall be maintained as an official record of the city. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram



other than the one which has been approved by the governing body of a municipality, school district, transit authority or public housing authority if the map or diagram is otherwise admissible under court rule.

F. As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise:

1. "School" has the meaning under RCW [28A.150.010](#) or [28A.150.020](#). The term "school" also includes a private school approved under RCW [28A.195.010](#);
2. "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;
3. "School bus route stop" means a school bus stop as designated by a school district;
4. "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;
5. "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle or any other device, vessel or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;
6. "Transit authority" means a city, county or state transportation system, transportation authority, public transportation benefit area, public transit authority or metropolitan municipal corporation within the state that operates public transit vehicles;
7. "Stop shelter" means a passenger shelter designated by a transit authority;
8. "Public housing project" means the same as "housing project" as defined in RCW [35.82.020](#).

**Section 3.** The following is provided for reference and may not be complete:

EMC Amended/Repealed by this Ordinance	Ordinance History of EMC Amended/Repealed by this Ordinance
10.35.100	(Ord. 2238-97 § 1, 1997; Ord. 1775-91 § 1, 1991.)

**Section 4.** The City Council hereby declares in the event that the Washington State Legislature

passes a law preempting any section, paragraph, sentence, clause or phrase of this ordinance, the preempted section, paragraph, sentence, clause or phrase of this ordinance shall cease to have effect on the same date the statute comes into effect. Any violation of this ordinance that occurs prior to the preempting statute coming into effect may be prosecuted and punished pursuant to this ordinance.

**Section 5.** The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

**Section 6.** The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

**Section 7.** The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

**Section 8.** It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

\_\_\_\_\_  
Cassie Franklin, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

PASSED: \_\_\_\_\_

VALID: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_



EFFECTIVE DATE: \_\_\_\_\_

DRAFT

